



महाराष्ट्र शासन राजपत्र

भाग सहा

वर्ष ५, अंक ३]

गुरुवार ते बुधवार, मार्च २८-एप्रिल ३, २०१९/चैत्र ७-१३, शके १९४१

[पृष्ठे ३०, किंमत : रुपये १४.००

प्राधिकृत प्रकाशन

संसदेचे अधिनियम व राष्ट्रपतींनी प्रख्यापित केलेले अध्यादेश

अनुक्रमणिका

	PAGES
ORDINANCE No. 4 OF 2019. —The Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019.	2
ORDINANCE No. 5 OF 2019. —The Indian Medical Council (Amendment) Second Ordinance, 2019.	4
ORDINANCE No. 6 OF 2019. —The Companies (Amendment) Second Ordinance, 2019	6
ORDINANCE No. 7 OF 2019. —The Banning of Unregulated Deposit Schemes Ordinance, 2019.	13

LAW AND JUDICIARY DEPARTMENT

Madam Cama Marg, Hutatma Rajguru Chowk, Mantralaya,
Mumbai 400 032, dated the 12th March 2019.

No. 383/B.—The following Ordinances promulgated by the President are hereby republished for general information :—

MINISTRY OF LAW AND JUSTICE

(LEGISLATIVE DEPARTMENT)

*New Delhi, the 21st February, 2019/Phalguna 2, 1940 (Saka)*THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE)
SECOND ORDINANCE, 2019

(No. 4 of 2019)

Promulgated by the President in the Seventieth year of the Republic of India.

An Ordinance to protect the rights of married Muslim women and to prohibit divorce by pronouncing talaq by their husbands and for matters connected therewith or incidental thereto ;

WHEREAS the Muslim Women (Protection of Rights on Marriage) Bill, 2017 has been passed by the House of the People and is pending in the Council of States ;

AND WHEREAS the Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 with certain modifications was promulgated by the President on the 19th day of September, 2018 ;

AND WHEREAS the Muslim Women (Protection of Rights on Marriage) Bill, 2018 to replace the said Ordinance has been passed by the House of the People and is pending in the Council of States ;

AND WHEREAS the Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 cease to operate on the 21st January, 2019, and to give continued effect to the provisions of the said Ordinance, the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 was promulgated by the President on the 12th day of January, 2019 ;

AND WHEREAS the Muslim Women (Protection of Rights on Marriage) Bill, 2018 replacing the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 with necessary official amendments was listed for consideration and passing in Rajya Sabha and it could not be taken up ;

AND WHEREAS to give continued effect to the provisions of the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019, it is necessary to take immediate necessary action in the matter ;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action ;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Ordinance may be called the Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019.

(2) It shall extend to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 19th day of September, 2018.

2. Definitions.—In this Ordinance, unless the context otherwise requires,—

(a) “electronic form” shall have the same meaning as assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000) ;

(b) “*talaq*” means *talaq-e-biddat* or any other similar form of *talaq* having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband ; and

(c) “Magistrate” means a Judicial Magistrate of the first class exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974), in the area where the married Muslim woman resides.

CHAPTER II

Declaration of *Talaq* to be *Void* and *Illegal*

3. *Talaq to be void and illegal.*—Any pronouncement of *talaq* by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be *void* and *illegal*.

4. *Punishment for pronouncing talaq.*—Any Muslim husband who pronounces *talaq* referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

CHAPTER III

PROTECTION OF RIGHTS OF MARRIED MUSLIM WOMEN

5. *Subsistence allowance.*—Without prejudice to the generality of the provisions contained in any other law for the time being in force, a married Muslim woman upon whom *talaq* is pronounced, shall be entitled to receive from her husband such amount of subsistence allowance for her and dependent children as may be determined by the Magistrate.

6. *Custody of minor children.*—Notwithstanding anything contained in any other law for the time being in force, a married Muslim woman shall be entitled to custody of her minor children in the event of pronouncement of *talaq* by her husband, in such manner as may be determined by the Magistrate.

7. *Offences to be cognizable, compoundable, etc.*—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) an offence punishable under this Ordinance shall be cognizable, if information relating to the commission of the offence is given to an officer in charge of a police station by the married Muslim woman upon whom *talaq* is pronounced or any person related to her by blood or marriage ;

(b) an offence punishable under this Ordinance shall be compoundable, at the instance of the married Muslim women upon whom *talaq* is pronounced with the permission of the Magistrate, on such terms and conditions as he may determine ;

(c) no person accused of an offence punishable under this Ordinance shall be released on bail unless the Magistrate, on an application filed by the accused and after hearing the married Muslim woman upon whom *talaq* is pronounced, is satisfied that there are reasonable grounds for granting bail to such person.

8. *Repeal and Savings.*—(1) The Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 (Ord. 1 of 2019) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 (Ord. 1 of 2019) shall be deemed to have been done or taken under the provisions of this Ordinance.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Government of India.

MINISTRY OF LAW AND JUSTICE

(LEGISLATIVE DEPARTMENT)

New Delhi, the 21st February, 2019/Phalguna 2, 1940 (Saka)

THE INDIAN MEDICAL COUNCIL (AMENDMENT) SECOND ORDINANCE, 2019

(No. 5 of 2019)

*Promulgated by the President in the Seventieth year of the Republic of India.**An Ordinance further to amend the Indian Medical Council Act, 1956.*

WHEREAS the Indian Medical Council (Amendment) Ordinance, 2018 was promulgated by the President on the 26th day of September, 2018 ;

AND WHEREAS the Indian Medical Council {Amendment} Bill, 2018 to replace the said Ordinance was introduced in the House of the People on 14th December, 2018 and the said Bill was considered and passed in the said House on 31st December, 2018 ;

AND WHEREAS the Indian Medical Council (Amendment) Bill, 2018 could not be taken up for consideration and passing in the Council of States ;

AND WHEREAS, as the Indian Medical Council (Amendment) Ordinance, 2018 would cease to operate in view of the provisions of sub-clause (a) of clause (2) of article 123 of the Constitution, the Indian Medical Council (Amendment) Ordinance, 2019 was promulgated by the President on the 12th day of January, 2019 ;

AND WHEREAS the Indian Medical Council (Amendment) Bill, 2018, as passed by the House of the People, could not be taken up for consideration and passing in the Council of States ;

AND WHEREAS the Indian Medical Council (Amendment) Ordinance, 2019 would cease to operate on the 13th day of March, 2019 ;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action ;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :—

1. Short title and commencement.—(1) This Ordinance may be called the Indian Medical Council (Amendment) Second Ordinance, 2019.

(2) (A) The provisions of this Ordinance shall, except sub-clause (i) of clause (c) of section 2, be deemed to have come into force on the 26th day of September, 2018 ; and

(B) sub-clause (i) of clause (c) of section 2 shall be deemed to have come into force on the 12th day of January, 2019.

2. Amendment of section 3A.—In section 3A of the Indian Medical Council Act, 1956 (102 of 1956),—

(a) in sub-section (1), for the words, brackets and figures “Indian Medical Council (Amendment) Act, 2010”, the words, brackets and figures “Indian Medical Council (Amendment) Second Ordinance, 2019” shall be substituted ;

(b) in sub-section (2), for the words “three years”, the words “two years” shall be substituted ;

(c) in sub-section (4),—

(i) for the words “seven persons”, the words “twelve persons” shall be substituted ;

(ii) for the words “and medical education”, the words “and medical education or proven administrative capacity and experience” shall be substituted ;

(d) after sub-section (7), the following sub-section shall be inserted, namely.—

“(7A) The Board of Governors shall be assisted by a Secretary General who shall be appointed by the Central Government on deputation or contract basis and he shall be the head of the secretariat in the Council.”.

3. *Repeal and savings.*—(1) The Indian Medical Council (Amendment) Ordinance, 2019 (Ord. 2 of 2019) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Indian Medical Council Act, 1956 (102 of 1956) as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the said Act, as amended by this Ordinance.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Government of India.

MINISTRY OF LAW AND JUSTICE

(LEGISLATIVE DEPARTMENT)

New Delhi, the 21st February, 2019/Phalgun 2, 1940 (Saka)

THE COMPANIES (AMENDMENT) SECOND ORDINANCE, 2019

(No. 6 of 2019)

*Promulgated by the President in the Seventieth year of the Republic of India.**An Ordinance further to amend the Companies Act, 2013.*

WHEREAS the Companies (Amendment) Ordinance, 2018 was promulgated by the President on the 2nd day of November, 2018 ;

AND WHEREAS the Companies (Amendment) Bill, 2019 to replace the Companies (Amendment) Ordinance, 2018 has been passed by the House of People on the 4th day of January, 2019 and is pending in the Council of States ;

AND WHEREAS in order to give continued effect to the provisions of the Companies (Amendment) Ordinance, 2018, the Companies (Amendment) Ordinance, 2019 was promulgated on the 12th day of January, 2019 ;

AND WHEREAS the Companies (Amendment) Bill, 2019 along with amendments to the said Bill could not be taken up for consideration and passing in the Council of States ;

AND WHEREAS the Companies (Amendment) Ordinance, 2019 will cease to operate on the 13th day of March, 2019 ;

AND WHEREAS it is considered necessary to give continued effect to the provisions of the Companies (Amendment) Ordinance, 2019 ;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action ;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :—

1. Short title and commencement.—(1) This Ordinance may be called the Companies (Amendment) Second Ordinance, 2019.

(2) It shall be deemed to have come into force on the 2nd day of November, 2018.

2. Amendment of Section 2.—In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act), in clause (41),—

(a) for the first proviso, the following provisos shall be substituted, namely :—

“Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year :

Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Second Ordinance, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.” ;

(b) in the second proviso, for the words “Provided further that”, the words “Provided also that” shall be substituted.

3. Insertion of new section 10A.—After section 10 of the principal Act, the following section shall be inserted, namely :—

“10A. *Commencement of business etc.*—(1) A company incorporated after the commencement of the Companies (Amendment) Second Ordinance, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless—

(a) a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration ; and

(b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.

(2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.

(3) Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

4. Amendment of section 12.—In section 12 of the principal Act, after sub-section (8), Amendment of the following sub-section shall be inserted, namely :—

“(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.”.

5. Amendment of section 14.—In section 14 of the principal Act,—

(i) in sub-section (1), for the second proviso, the following provisos shall be substituted, namely :—

“Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed :

Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies (Amendment) Second Ordinance, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.” ;

(ii) in sub-section (2), for the word “Tribunal”, the words “Central Government” shall be substituted.

6. Amendment of section 53.—In section 53 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely :—

“(3) Where any company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum from the date of issue of such shares to the persons to whom such shares have been issued.”.

7. Amendment of section 64.—In section 64 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely :—

“(2) Where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less.”.

8. Amendment of section 77.—In section 77 of the principal Act, in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely :—

“Provided that the Registrar may, on an application by the company, allow such registration to be made—

(a) in case of charges created before the commencement of the Companies (Amendment) Second Ordinance, 2019, within a period of three hundred days of such creation ; or

(b) in case of charges created on or after the commencement of the Companies (Amendment) Second Ordinance, 2019, within a period of sixty days of such creation, on payment of such additional fees as may be prescribed :

Provided further that if the registration is not made within the period specified—

(a) in clause (a) to the first proviso, the registration of the charge shall be made within six months from the date of commencement of the Companies (Amendment) Second Ordinance, 2019, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies ;

(b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such *advalorem* fees as may be prescribed.”.

9. Amendment of section 86.—Section 86 of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely :—

“(2) If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.”.

10. Substitution of new section for section 87.—For section 87 of the principal Act, the following section shall be substituted, namely :—

“87. *Rectification by Central Government in Register of charges.*—The Central Government on being satisfied that —

(a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter ; or

(b) the omission or misstatement of any particulars, in any filing previously made to the Registrar with respect to any charge or modification thereof or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,

was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as it deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified.”.

11. Amendment of section 90.—In section 90 of the principal Act,—

(i) for sub-section (9), the following sub-section shall be substituted, namely :—

“(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), within a period of one year from the date of such order :

Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred, without any

restrictions, to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed ;

(ii) in sub-section (10),—

(a) after the word “punishable”, the words “with imprisonment for a term which may extend to one year or” shall be inserted ;

(b) after the words “ten lakh rupees”, the words “or with both” shall be inserted ;

12. Amendment of section 92.—In section 92 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely :—

“(5) If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.”.

13. Amendment of section 102.—In section 102 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely :—

“(5) Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.”.

14. Amendment of section 105.—In section 105 of the principal Act, in sub-section (3), for Amendment of for the words “punishable with fine which may extend to five thousand rupees”, the words “liable to a penalty of five thousand rupees” shall be substituted.

15. Amendment of section 117.—In section 117 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely :—

“(2) If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

16. Amendment of section 121.—In section 121 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely :—

“(3) If the company fails to file the report under sub-section (2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”.

17. Amendment of section 137.—In section 137 of the principal Act, in sub-section (3),—

(a) for the words “punishable with fine”, the words “liable to a penalty” shall be substituted ;

(b) for the portion beginning with “punishable with imprisonment”, and ending with “five lakh rupees or with both”, the words “shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees” shall be substituted.

18. Amendment of section 140.—In section 140 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely :—

“(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

19. Amendment of section 157.—In section 157 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely :—

“(2) If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”.

20. Substitution of new section for section 159.—For section 159 of the principal Act, the following section shall be substituted, namely :—

“159. *Penalty for default of certain provisions.*—If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues.”.

21. Amendment of section 164.—In section 164 of the principal Act, in sub-section (1), after clause (h), the following clause shall be inserted, namely :—

“(i) he has not complied with the provisions of sub-section (1) of section 165.”.

22. Amendment of section 165.—In section 165 of the principal Act, in sub-section (6), for the portion beginning with “punishable with fine” and ending with “contravention continues”, the words “liable to a penalty of five thousand rupees for each day after the first during which such contravention continues” shall be substituted.

23. Amendment of section 191.—In section 191 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely :—

“(5) If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees.”.

24. Amendment of section 197.—In section 197 of the principal Act,—

(a) sub-section (7) shall be omitted ;

(b) for sub-section (15), the following sub-section shall be substituted, namely :—

“(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.”.

25. Amendment of section 203.—In section 203 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely :—

“(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.”.

26. Amendment of section 238.—In section 238 of the principal Act, in sub-section (3), for the words “punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees”, the words “liable to a penalty of one lakh rupees” shall be substituted.

27. Amendment of section 248.—In section 248 of the principal Act, in sub-section (1),—

(a) in clause (c), for the word and figures “section 455,”, the words and figures “section 455 ; or” shall be substituted ;

(b) after clause (c) and before the long line, the following clauses shall be inserted, namely :—

“(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A ; or

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.”.

28. Amendment of section 441.—In section 441 of the principal Act,—

(a) in sub-section (1), in clause (b), for the words “does not exceed five lakh rupees”, the words “does not exceed twenty-five lakh rupees” shall be substituted ;

(b) for sub-section (6), the following sub-section shall be substituted, namely :—

“(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.”.

29. Amendment of section 446B.—In section 446B of the principal Act, for the portion beginning with “punishable with fine” and ending with “specified in such sections”, the words “liable to a penalty which shall not be more than one half of the penalty specified in such sections” shall be substituted.

30. Amendment of section 447.—In section 447 of the principal Act, in the second proviso, for the words “twenty lakh rupees”, the words “fifty lakh rupees” shall be substituted.

31. Amendment of section 454.—In section 454 of the principal Act,—

(i) for sub-section (3), the following sub-section shall be substituted, namely :—

“(3) The adjudicating officer may, by an order—

(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act ; and

(b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.” ;

(ii) in sub-section (4), for the words “such company and the officer who is in default”, the words “such company, the officer who is in default or any other person” shall be substituted ;

(iii) in sub-section (8),—

(a) in clause (i), for the words “does not pay the penalty imposed by the adjudicating officer or the Regional Director”, the words, brackets and figures “fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,” shall be substituted ;

(b) in clause (ii)—

(i) for the words “Where an officer of a company”, the words “Where an officer of a company or any other person” shall be substituted ;

(ii) for the words “does not pay the penalty”, the words, brackets and figures “fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,” shall be substituted.

32. Insertion of new section 454A.—After section 454 of the principal Act, the following section shall be inserted, namely :—

“454A. *Penalty for repeated default.*—Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such

penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act.”.

33. *Repeal and Savings.*—(1) The Companies (Amendment) Ordinance, 2019 (Ord. 3 of 2019) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Government of India.

MINISTRY OF LAW AND JUSTICE

(LEGISLATIVE DEPARTMENT)

New Delhi, the 21st February, 2019/Phalgun 2, 1940 (Saka)

THE BANNING OF UNREGULATED DEPOSIT SCHEMES ORDINANCE, 2019

(No. 7 of 2019)

Promulgated by the President in the Seventieth year of the Republic of India.

An Ordinance to provide for a comprehensive mechanism to ban the unregulated deposit schemes and to protect the interest of depositors and for matters connected therewith or incidental thereto.

WHEREAS the Banning of Unregulated Deposit Schemes Bill, 2019 was passed on the 13th day of February, 2019 in the House of the People ;

AND WHEREAS the said Bill could not be taken up for consideration and passing in the Council of States ;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action ;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :—

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Ordinance may be called the Banning of Unregulated Deposit Schemes Ordinance, 2019.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force at once.

2. *Definitions.*—In this Ordinance, unless the context otherwise requires,—

(1) “appropriate Government” means in respect of matters relating to,—

(i) the Union territory without legislature, the Central Government ;

(ii) the Union territory of Puducherry, the Government of that Union territory ;

(iii) the Union territory of Delhi, the Government of that Union territory ; and

(iv) the State, the State Government ;

(2) “company” shall have the same meaning as assigned to it in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013) ;

(3) “Competent Authority” means an Authority appointed by the appropriate Government under section 7 ;

(4) “deposit” means an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include—

(a) amounts received as loan from a scheduled bank or a co-operative bank or any other banking company as defined in section 5 of the Banking Regulation Act, 1949 (10 of 1949) ;

(b) amounts received as loan or financial assistance from the Public Financial Institutions notified by the Central Government in consultation with the Reserve Bank of India or any non-banking financial company as defined in clause (f) of section 45-1 of the Reserve Bank of India Act, 1934 (2 of 1934) and is registered with the Reserve Bank of India or any Regional Financial Institutions or insurance companies ;

(c) amounts received from the appropriate Government, or any amount received from any other source whose repayment is guaranteed by the appropriate Government, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature ;

(d) amounts received from foreign Governments, foreign or international banks, multilateral financial institutions, foreign Government owned development financial institutions, foreign export credit collaborators, foreign bodies corporate, foreign citizens, foreign authorities or person resident outside India subject to the provisions of the Foreign Exchange Management Act, 1999 (42 of 1999) and the rules and regulations made thereunder ;

(e) amounts received by way of contributions towards the capital by partners of any partnership firm or a limited liability partnership ;

(f) amounts received by an individual by way of loan from his relatives or amounts received by any firm by way of loan from the relatives of any of its partners ;

(g) amounts received as credit by a buyer from a seller on the sale of any property (whether movable or immovable) ;

(h) amounts received by an asset re-construction company which is registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) ;

(i) any deposit made under section 34 or an amount accepted by a political party under section 29B of the Representation of People Act, 1951 (43 of 1951) ;

(j) any periodic payment made by the members of the self-help groups operating within such ceilings as may be prescribed by the State Government or Union territory Government ;

(k) any other amount collected for such purpose and within such ceilings as may be prescribed by the State Government ;

(l) an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including—

(i) payment, advance or part payment for the supply or hire of goods or provision of services and is repayable in the event the goods or services are not in fact sold, hired or otherwise provided ;

(ii) advance received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement ;

(iii) security or dealership deposited for the performance of the contract for supply of goods or provision of services ; or

(iv) an advance under the long-term projects for supply of capital goods except those specified in item (ii) :

Provided that if the amounts received under items (i) to (iv) become refundable, such amounts shall be deemed to be deposits on the expiry of fifteen days from the date on which they become due for refund :

Provided further that where the said amounts become refundable, due to the deposit taker not obtaining necessary permission or approval under the law for the time being in force, wherever required, to deal in the goods or properties or services for which money is taken, such amounts shall be deemed to be deposits.

Explanation.— For the purposes of this clause,—

(i) in respect of a company, the expression “deposit” shall have the same meaning as assigned to it under the Companies Act, 2013 (18 of 2013) ;

(ii) in respect of a non-banking financial company registered under the Reserve Bank of India Act, 1934 (2 of 1934), the expression “deposit” shall have the same meaning as assigned to it in clause (bb) of the section 45-1 of the said Act ;

(iii) the expressions “partner” and “firm” shall have the same meanings as respectively assigned to them under the Indian Partnership Act, 1932 (9 of 2009) ;

(iv) the expression “partner” in respect of a limited liability partnership shall have the same meaning as assigned to it in clause (q) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009) ;

(v) the expression “relative” shall have the same meaning as assigned to it in the Companies Act, 2013 (18 of 2013) ;

- (5) "depositor" means any person who makes a deposit under this Ordinance ;
- (6) "deposit taker" means—
- (i) any individual or group of individuals ;
 - (ii) a proprietorship concern ;
 - (iii) a partnership firm (whether registered or not) ;
 - (iv) a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009) ;
 - (v) a company ;
 - (vi) an association of persons ;
 - (vii) a trust (being a private trust governed under the provisions of the Indian Trusts Act, 1882 (2 of 1882) or a public trust, whether registered or not) ;
 - (viii) a co-operative society or a multi-State co-operative society ; or
 - (ix) any other arrangement of whatsoever nature, receiving or soliciting deposits, but does not include—
- (i) a Corporation incorporated under an Act of Parliament or a State Legislature ;
 - (ii) a banking company, a corresponding new bank, the State Bank of India, a subsidiary bank, a regional rural bank, a co-operative bank or a multi-State co-operative bank as defined in the Banking Regulation Act, 1949 (10 of 1949) ;
- (7) "Designated Court" means a Designated Court constituted by the appropriate Government under section 8 ;
- (8) "insurer" shall have the same meaning as assigned to it in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938) ;
- (9) "notification" means a notification published in the *Official Gazette* and the expression "notify" shall be construed accordingly ;
- (10) "person" includes—
- (i) an individual ;
 - (ii) a Hindu Undivided Family ;
 - (iii) a company ;
 - (iv) a trust ;
 - (v) a partnership firm ;
 - (vi) a limited liability partnership ;
 - (vii) an association of persons ;
 - (viii) a co-operative society registered under any law for the time being in force relating to co-operative societies ; or
 - (ix) every artificial juridical person, not falling within any of the preceding sub-clauses ;
- (11) "prescribed" means prescribed by the rules made by the Central Government or, as the case may be, the State Government under this Ordinance ;
- (12) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located ;
- (13) "public financial institution" shall have the same meaning as assigned to it in clause (72) of section 2 of the Companies Act, 2013 (18 of 2013) ;
- (14) "Regulated Deposit Scheme" means the Schemes specified under column (3) of the First Schedule ;
- (15) "Regulator" means the Regulator specified in column (2) of the First Schedule ;
- (16) "Schedule" means the Schedules appended to this Ordinance ;

(17) "Unregulated Deposit Scheme" means a Scheme or an arrangement under which deposits are accepted or solicited by any deposit taker by way of business and which is not a Regulated Deposit Scheme, as specified under column (3) of the First Schedule.

CHAPTER II

BANNING OF UNREGULATED DEPOSIT SCHEMES

3. Banning of Unregulated Deposit Schemes.—On and from the date of commencement of this Ordinance,—

(a) the Unregulated Deposit Schemes shall be banned ; and

(b) no deposit taker shall, directly or indirectly, promote, operate, issue any advertisement soliciting participation or enrolment in or accept deposits in pursuance of an Unregulated Deposit Scheme.

4. Fraudulent default in Regulated Deposit Schemes.—No deposit taker, while accepting deposits pursuant to a Regulated Deposit Scheme, shall commit any fraudulent default in the repayment or return of deposit on maturity or in rendering any specified service promised against such deposit.

5. Wrongful inducement in relation to Unregulated Deposit Schemes.—No person by whatever name called shall knowingly make any statement, promise or forecast which is false, deceptive or misleading in material facts or deliberately conceal any material facts, to induce another person to invest in, or become a member or participant of any Unregulated Deposit Scheme.

6. Certain scheme to be Unregulated Deposit Scheme.—A prize chit or a money circulation scheme banned under the provisions of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 (43 of 1978) shall be deemed to be an Unregulated Deposit Scheme under this Ordinance.

CHAPTER III

AUTHORITIES

7. Competent Authority.—(1) The appropriate Government shall, by notification, appoint one or more officers not below the rank of Secretary to that Government, as the Competent Authority for the purposes of this Ordinance.

(2) The appropriate Government may, by notification, appoint such other officer or officers as it thinks fit, to assist the Competent Authority in discharging its functions under this Ordinance.

(3) Where the Competent Authority or officers appointed under sub-section (2), for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of such information and particulars as may be prescribed that any deposit taker is soliciting deposits in contravention of section 3, he may, by order in writing, provisionally attach the deposits held by the deposit taker and the money or other property acquired either in the name of the deposit taker or in the name of any other person on behalf of the deposit taker from the date of the order, in such manner as may be prescribed.

(4) The Competent Authority shall, for the purposes of sub-section (3), have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while conducting investigation or inquiry in respect of the following matters, namely :—

(a) discovery and inspection ;

(b) enforcing the attendance of any person, including any officer of a reporting entity and examining him on oath ;

(c) compelling the production of records ;

(d) receiving evidence on affidavits ;

(e) issuing commissions for examination of witnesses and documents ; and

(f) any other matter which may be prescribed.

(5) The Competent Authority shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this section.

(6) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(7) Every proceeding under sub-sections (4) and (5) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

(8) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Ordinance :

Provided that the officers referred to in sub-section (2) shall not—

(a) impound any records without recording his reasons for so doing ; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Competent Authority.

8. Designated Court.—(1) The appropriate Government shall, with the concurrence of the Chief Justice of the concerned High Court, by notification, constitute one or more Courts known as the Designated Courts for such area or areas or such case or cases as may be specified in such notification, which shall be presided over by a Judge not below the rank of a District and Sessions Judge or Additional District and Sessions Judge.

(2) No Court other than the Designated Court shall have jurisdiction in respect of any matter to which the provisions of this Ordinance apply.

(3) When trying an offence under this Ordinance, the Designated Court may also try an offence, other than an offence under this Ordinance, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

CHAPTER IV

INFORMATION ON DEPOSIT TAKERS

9. Central database.—(1) The Central Government may designate an authority, whether existing or to be constituted, which shall create, maintain and operate an online database for information on deposit takers operating in India.

(2) The authority designated under sub-section (1) may require any Regulator or the Competent Authority to share such information on deposit takers, as may be prescribed.

10. Intimation of business by deposit taker.—(1) Every deposit taker which commences or carries on its business as such on or after the commencement of this Ordinance shall intimate the authority referred to in sub-section (1) of section 9 about its business in such form and manner and within such time, as may be prescribed.

(2) The Competent Authority may, if it has reason to believe that the deposits are being solicited or accepted pursuant to an Unregulated Deposit Scheme, direct any deposit taker to furnish such statements, information or particulars, as it considers necessary, relating to or connected with the deposits received by such deposit taker.

Explanation.— For the removal of doubts, it is hereby clarified that—

(a) the requirement of intimation under sub-section (1) is applicable to deposit takers accepting or soliciting deposits as defined in clause (4) of section 2 ; and

(b) the requirement of intimation under sub-section (1) applies to a company, if the company accepts the deposits under Chapter V of the Companies Act, 2013 (18 of 2013).

11. Information to be shared.—(1) The Competent Authority shall share all information received under section 29 with the Central Bureau of Investigation and with the authority which may be designated by the Central Government under section 9.

(2) The appropriate Government, any Regulator, income-tax authorities or any other investigation agency, having any information or documents in respect of the offence investigated under this Ordinance by the police or the Central Bureau of Investigation, shall share all such information or documents with the police or the Central Bureau of Investigation.

(3) Where the principal officer of any banking company, a corresponding new bank, the State Bank of India, a subsidiary bank, a regional rural bank, a co-operative bank or a multi-State co-operative bank has reason to believe that any client is a deposit taker and is acting in contravention to the provisions of this Ordinance, he shall forthwith inform the same to the Competent Authority.

CHAPTER V

RESTITUTION TO DEPOSITORS

12. Priority of depositors' claim.—Save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) or the Insolvency and Bankruptcy Code, 2016 (31 of 2016), any amount due to depositors from a deposit taker shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the appropriate Government or the local authority.

13. Precedence of attachment.—(1) Save as otherwise provided in the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) or the Insolvency and Bankruptcy Code, 2016 (31 of 2016), an order of provisional attachment passed by the Competent Authority, shall have precedence and priority, to the extent of the claims of the depositors, over any other attachment by any authority competent to attach property for repayment of any debts, revenues, taxes, cesses and other rates payable to the appropriate Government or the local authority.

(2) Where an order of provisional attachment has been passed by the Competent Authority—

(a) such attachment shall continue until an order is passed under sub-section (3) or sub-section (5) of section 15 by the Designated Court ;

(b) all the attached money or property of the deposit taker and the persons mentioned therein shall vest in the Competent Authority and shall remain so vested till further order of the Designated Court.

(3) The Competent Authority shall open an account in a scheduled bank for the purpose of crediting and dealing with the money realised under this Ordinance, which shall not be utilised except under the instructions of the Designated Court.

(4) The Competent Authority shall not dispose of or alienate the property or money attached except in accordance with the order of the Designated Court under sub-section (3) or sub-section (5) of section 15.

(5) Notwithstanding anything contained in sub-section (4), the Competent Authority may, if it thinks it expedient, order the immediate sale of perishable items or assets, and the proceeds of the sale shall be utilised in the same manner as provided for other property.

14. Application for confirmation of attachment and sale of property.—(1) The Competent Authority shall, within a period of thirty days, which may extend up to sixty days, for reasons to be recorded in writing, from the date of the order of provisional attachment, file an application with such particulars as may be prescribed, before the Designated Court for making the provisional attachment absolute, and for permission to sell the property so attached by public auction or, if necessary, by private sale.

(2) In case where the money or property has been attached on the permission granted by a Designated Court in another State or Union territory, the application for confirmation of such attachment shall be filed in that Court.

15. Confirmation of attachment by Designated Court.—(1) Upon receipt of an application under section 14, the Designated Court shall issue notice to—

(a) the deposit taker ; and

(b) any person whose property is attached under section 14,

to show cause, within a period of thirty days from the date of issue of notice, as to why the order of attachment should not be made absolute and the properties so attached be sold.

(2) The Designated Court shall also issue notice to all other persons represented to it as having or being likely to claim any interest or title in the property, to appear on the same date as persons referred to in sub-section (1) to raise objections, if they so desire, to the attachment of the property.

(3) The Designated Court shall, after adopting such procedure as may be prescribed, pass an order—

- (a) making the provisional order of attachment absolute ; or
- (b) varying it by releasing a portion of the property from attachment ; or
- (c) cancelling the provisional order of attachment,

and in case of an order under clause (a) or clause (b), direct the Competent Authority to sell the property so attached by public auction or, if necessary, by private sale and realise the sale proceeds.

(4) The Designated Court shall not, in varying or cancelling the provisional order of attachment, release any property from attachment, unless it is satisfied that—

- (a) the deposit taker or the person referred to in sub- section (1) has interest in such property ; and
- (b) there shall remain an amount or property sufficient for repayment to the depositors of such deposit taker.

(5) The Designated Court shall pass such order or issue such direction as may be necessary for the equitable distribution among the depositors of the money attached or realised out of the sale.

(6) The Designated Court shall endeavor to complete the proceedings under this section within a period of one hundred and eighty days from the date of receipt of the application referred to in sub-section (1).

16. Attachment of property of malafide transferees.—(1) Where the Designated Court is satisfied that there is a reasonable cause for believing that the deposit taker has transferred any property otherwise than in good faith and not for commensurate consideration, it may, by notice, require any transferee of such property, whether or not he received the property directly from the said deposit taker, to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

(2) Where the said transferee does not appear and show cause on the specified date or where the Designated Court is satisfied that the transfer of the property to the said transferee was not a bonafide transfer and not for commensurate consideration, it shall order the attachment of so much of the said transferee's property as in its opinion is equivalent to the proper value of the property transferred.

17. Payment in lieu of attachment.—(1) Any deposit taker or a person referred to in sub-section (1) of section 15, or transferee referred to in section 16 whose property is about to be attached or has been provisionally attached under this Ordinance, may, at any time before the confirmation of attachment, apply to the Designated Court for permission to deposit the fair value of the property in lieu of attachment.

(2) While allowing the deposit taker or person or transferee referred to in sub-section (1) to make the deposit under sub-section (1), the Designated Court may order such deposit taker or person or transferee to pay any sum towards costs as may be applicable.

18. Powers of Designated Court.—(1) The Designated Court shall exercise the following powers, namely :—

- (a) power to approve the statement of dues of the deposit taker due from various debtors ;
- (b) power to assess the value of the assets of the deposit taker and finalise the list of the depositors and their respective dues ;
- (c) power to direct the Competent Authority to take possession of any assets belonging to or in the control of the deposit taker and to sell, transfer or realise the attached assets, either by public auction or by private sale as it -deems fit depending upon the nature of assets and credit the sale proceeds thereof to its bank account ;
- (d) power to approve the necessary expenditure to be incurred by the Competent Authority for taking possession and realisation of the assets of the deposit taker ;

(e) power to pass an order for full payment to the depositors by the Competent Authority or an order for proportionate payment to the depositors in the event the money so realised is not sufficient to meet the entire deposit liability ;

(f) power to direct any person, who has made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Ordinance, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention ; and

(g) power to pass any other order which the Designated Court deems fit for realisation of assets of the deposit taker and for repayment of the same to the depositors of such deposit taker or on any other matter or issue incidental thereto.

(2) On the application of any person interested in any property attached and vested in the Competent Authority under this Ordinance and after giving such Competent Authority an opportunity of being heard, make such order as the Designated Court considers just and reasonable for—

(a) providing from such of the property attached and vested in the Competent Authority as the applicant claims an interest in, such sums as may be reasonably necessary for the maintenance of the applicant and of his family, and for expenses connected with the defence of the applicant where criminal proceedings have been initiated against him in the Designated Court under this Ordinance ; or

(b) safeguarding, so far as may be practicable, the interest of any business affected by the attachment.

Explanation.—For the purposes of this section, the expression “deposit taker” includes the directors, promoters, managers or members of said establishment or any other person whose property or assets have been attached under this Ordinance.

19. Appeal to High Court.—Any person including the Competent Authority, if aggrieved by any final order of the Designated Court under this Chapter, may appeal to the High Court, within a period of sixty days from the date of such order :

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Explanation.— The expression “High Court” means the High Court of a State or Union territory where the Designated Court is situated.

20. Power of Supreme Court to transfer cases.—(1) Whenever it is made to appear to the Supreme Court that there is a default in any deposit scheme or deposit schemes of the nature referred to in section 30, the Supreme Court may, by an order, direct that any particular case be transferred from one Designated Court to another Designated Court.

(2) The Supreme Court may act under this section only on an application filed by the Competent Authority or any interested party, and every such application shall be supported by an affidavit.

(3) Where an application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding fifty thousand rupees as it may consider appropriate in the circumstances of the case.

CHAPTER VI

OFFENCES AND PUNISHMENTS

21. Punishment for contravention of section 3.—(1) Any deposit taker who solicits deposits in contravention of section 3 shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than two lakh rupees but which may extend to ten lakh rupees.

(2) Any deposit taker who accepts deposits in contravention of section 3 shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine which shall not be less than three lakh rupees but which may extend to ten lakh rupees.

(3) Any deposit taker who accepts deposits in contravention of section 3 and fraudulently defaults in repayment of such deposits or in rendering any specified service, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to ten years and with fine which shall not be less than five lakh rupees but which may extend to twice the amount of aggregate funds collected from the subscribers, members or participants in the Unregulated Deposit Scheme.

Explanation.— For the purposes of this Ordinance,—

(i) the expression “fraudulently” shall have the same meaning as assigned to it in section 25 of the Indian Penal Code (45 of 1860) ;

(ii) where the terms of the Deposit Scheme are entirely impracticable or unviable, the terms shall be relevant facts showing an intention to defraud.

22. Punishment for contravention of section 4.—Any deposit taker who contravenes the provisions of section 4 shall be punishable with imprisonment for a term which may extend to seven years, or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of the fraudulent default referred to in said section, whichever is higher, or with both.

23. Punishment for contravention of section 5.—Any person who contravenes the provisions of section 5 shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which may extend to ten lakh rupees.

24. Punishment for repeat offenders—Whoever having been previously convicted of an offence punishable under this Chapter, except the offence under section 26, is subsequently convicted of an offence shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and with fine which shall not be less than ten lakh rupees but which may extend to fifty crore rupees.

25. Offences by deposit takers other than individuals.—(1) Where an offence under this Ordinance has been committed by a deposit taker other than an individual, every person who, at the time the offence was committed, was in charge of, and was responsible to, the deposit taker for the conduct of its business, as well as the deposit taker, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Nothing contained in sub-section (1) shall render any such person liable to any punishment provided in this Ordinance, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(3) Notwithstanding anything contained in sub-section (1), where an offence under this Ordinance has been committed by a deposit taker other than an individual, and it is proved that the offence—

(a) has been committed with the consent or connivance ; or

(b) is attributable to any neglect on the part of any director, manager, secretary, promoter, partner, employee or other officer of the deposit taker,

such person shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

26. Punishment for contravention of section 10.—Whoever fails to give the intimation required under sub-section (1) of section 10 or fails to furnish any such statements, information or particulars as required under sub-section (2) of that section, shall be punishable with fine which may extend to five lakh rupees.

27. Cognizance of offences.—Notwithstanding anything contained in section 4, no Designated Court shall take cognizance of an offence punishable under that section except upon a complaint made by the Regulator :

Provided that the provisions of section 4 and this section shall not apply in relation to a deposit taker which is a company.

CHAPTER VII

INVESTIGATION, SEARCH AND SEIZURE

28. Offences to be cognizable and non-bailable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) every offence punishable under this Ordinance, except the offence under section 22 and section 26, shall be cognizable and non-bailable.

29. Competent Authority to be informed of offences.—The police officer shall, on recording information about the commission of an offence under this Ordinance, inform the same to the Competent Authority.

30. Investigation of offences by Central Bureau of Investigation.—(1) On receipt of information under section 29 or otherwise, if the Competent Authority has reason to believe that the offence relates to a deposit scheme or deposit schemes in which—

(a) the depositors, deposit takers or properties involved are located in more than one State or Union territory in India or outside India ; and

(b) the total value of the amount involved is of such magnitude as to significantly affect the public interest,

the Competent Authority shall refer the matter to the Central Government for investigation by the Central Bureau of Investigation.

(2) The reference made by the Competent Authority under sub-section (1) shall be deemed to be with the consent of the State Government under section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946).

(3) On the receipt of the reference under sub-section (1), the Central Government may transfer the investigation of the offence to the Central Bureau of Investigation under section 5 of the Delhi Special Police Establishment Act, 1946 (25 of 1946).

31. Power to enter search and seize without warrant.—(1) Whenever any police officer, not below the rank of an officer-in-charge of a police station, has reason to believe that anything necessary for the purpose of an investigation into any offence under this Ordinance may be found in any place within the limits of the police station of which he is in-charge, or to which he is attached, such officer may, with the written authorisation of an officer not below the rank of Superintendent of Police, and after recording in writing so far as possible, the thing for which the search is to be made and subject to the rules made in this behalf, authorise any officer sub-ordinate to him,—

(a) to enter and search any building, conveyance or place, between sunrise and sunset, which he has reason to suspect is being used for purposes connected with the promotion or conduct of any deposit taking scheme or arrangement in contravention of the provisions of this Ordinance ;

(b) in case of resistance, to break open any door and remove any obstacle to such entry, if necessary by force, with such assistance as he considers necessary, for exercising the powers conferred by clause (a) ;

(c) to seize any record or property found as a result of the search in the said building, conveyance or place, which are intended to be used, or reasonably suspected to have been used, in connection with any such deposit-taking scheme or arrangement in contravention of the provisions of this Ordinance ; and

(d) to detain and search, and if he thinks proper, take into custody and produce before any Designated Court any such person whom he has reason to believe to have committed any offence punishable under this Ordinance :

Provided that if such officer has reason to believe that the said written authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may, without the said written authorisation, enter and search such building, conveyance or place, at any time between sunset and sunrise after recording the grounds in writing.

(2) Where it is not practicable to seize the record or property, the officer authorised under sub-section (1), may make an order in writing to freeze such property, account, deposits or valuable

securities maintained by any deposit taker about which a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been connected with the promotion or conduct of any deposit taking scheme or arrangement in contravention of the provisions of this Ordinance and it shall be binding on the concerned bank or financial or market establishment to comply with the said order :

Provided that no bank or financial or market establishment shall freeze such account, deposit or valuable securities, for a period beyond thirty days unless the same is authorised by the order of the Designated Court :

Provided further that, if at any time, it becomes practicable to seize the frozen property, the officer authorised under sub-section (1) may seize such property.

Explanation.—For the purpose of this section, the expressions,—

(i) “freezing of account” shall mean that no transaction, whether deposit or withdrawal shall be allowed in the said account ; and

(ii) “freezing of property” shall mean that no transfer, conversion, disposition or movement of property shall be allowed.

(3) Where an officer takes down any information in writing or records grounds for his belief or makes an order in writing under sub-section (1) or sub-section (2), he shall, within a time of seventy-two hours send a copy thereof to the Designated Court in a sealed envelope and the owner or occupier of the building, conveyance or place shall, on application, be furnished, free of cost, with a copy of the same by the Designated Court.

(4) All searches, seizures and arrests under this section shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

32. Application of Code of Criminal Procedure, 1973 to proceedings before Designated Court.—

(1) The Designated Court may take cognizance of offences under this Ordinance without the accused being committed to it for trial.

(2) Save as otherwise provided in section 31, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply—

(a) to all arrests, searches and seizures made under this Ordinance ;

(b) to the proceedings under this Ordinance and for the purposes of the said provisions, the Designated Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Designated Court, shall be deemed to be Public Prosecutors.

CHAPTER VIII

MISCELLANEOUS

33. Publication of advertisement of Unregulated Deposit Scheme.—Where any newspaper or other publication of any nature, contains any statement, information or advertisement promoting, soliciting deposits for, or inducing any person to become a member of any Unregulated Deposit Scheme, the appropriate Government may direct such newspaper or publication to publish a full and fair retraction, free of cost, in the same manner and in the same position in such newspaper or publication as may be prescribed.

34. Ordinance to have overriding effect.—Save as otherwise expressly provided in this Ordinance, the provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force, including any law made by any State or Union territory.

35. Application of other laws not barred.—The provisions of this Ordinance shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

36. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against the appropriate Government or the Competent Authority or any officer of the appropriate Government for anything-which is in good faith done or intended to be done under this Ordinance or the rules made thereunder.

37. Power of Central Government to make rules.—(1) The Central Government may, by notification, make rules for carrying out the provisions of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the information and other particulars to be taken into consideration before issuing an order, and the manner of attachment, under sub-section (3) of section 7 ;
- (b) information to be shared under sub-section (2) of section 9 ;
- (c) the form and manner in which and the time within which the intimation shall be given under sub-section (1) of section 10 ;
- (d) the particulars contained in the application to be filed by the Competent Authority before the Designated Court under sub-section (1) of section 14 ;
- (e) the procedure to be adopted by the Designated Court before issuing an order under sub-section (3) of section 15 ;
- (f) rules under sub-section (1) of section 31 ;
- (g) the manner of publication of advertisement under section 33 ; and
- (h) any other matter which is required to be, or may be, prescribed.

38. Power of State Government, etc. to make rules.—(1) The State Government or Union territory Government, as the case may be, in consultation with the Central Government, by notification, make rules for carrying out the provisions of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) ceiling for self-help groups under clause (j) of sub-section (4) of section 2 ;
- (b) purpose and ceiling under clause (k) of sub-section (4) of section 2 ;
- (c) the manner of provisional attachment of property by the Competent Authority under sub-section (3) of section 7 ;
- (d) other matters under clause (f) of sub-section (4) of section 7 ;
- (e) the rules relating to impounding and custody of records under sub-section (8) of section 7 ;
- (f) any other matter which is required to be, or may be, prescribed.

39. Laying of rules.—(1) Every rule made by the Central Government under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(2) Every rule made by a State Government or the Union territory Government, as the case may be shall be laid, as soon as may be after it is made, before each House of the State Legislature or the Union territory Legislature, as the case may be, where it consists of two Houses, or where such Legislature consists of one House, before that House.

40. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the *Official Gazette*, make such provisions, not inconsistent with the provisions of this Ordinance, as may appear to be necessary for removing the difficulty :

Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Ordinance.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

41. Power to amend First Schedule.—(1) The Central Government may, having regard to the objects of this Ordinance, and if it considers necessary or expedient so to do, by notification, add to, or as the case may be, omit from the First Schedule, any scheme or arrangement, and on such addition, or omission, such scheme or arrangement shall become, or cease to be, a Regulated Deposit Scheme, as the case may be.

(2) A copy of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.

42. Amendment to certain enactments.—The enactments specified in the Second Schedule shall be amended in the manner specified therein.

FIRST SCHEDULE

[(See section 2 (15)]

REGULATED DEPOSIT SCHEMES

(1) The Regulator and Regulated Deposit Scheme refers to the regulators and schemes and arrangements listed in the following Table, namely :—

TABLE

Sl. No. (1)	Regulator (2)	Regulated Deposit Scheme (3)
1.	Securities and Exchange Board of India.	<p>(i) Any scheme or an arrangement [as defined under section 11AA of the Securities and Exchange Board of India Act, 1992 (15 of 1992)] launched, sponsored or carried out by a Collective Investment Management Company registered with the Securities and Exchange Board of India under the Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999.</p> <p>(ii) Any scheme or an arrangement registered with the Securities and Exchange Board of India under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.</p> <p>(iii) Any scheme or an arrangement, pursuant to which funds are managed by a portfolio manager, registered under the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993.</p> <p>(iv) Any scheme or an arrangement regulated under the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 or providing for employee benefits as permitted under the Companies Act, 2013 (18 of 2013).</p> <p>(v) Any other scheme or an arrangement registered under the Securities and Exchange Board of India Act, 1992 (15 of 1992), or the regulations made thereunder.</p> <p>(vi) Any amount received as contributions in the nature of subscriptions to a mutual fund registered with Securities and Exchange Board of India under the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996.</p>
2.	Reserve Bank of India	<p>(i) Any scheme under which deposits are accepted by Non-Banking Financial Companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) and registered with the Reserve Bank of India ; or any other scheme or an arrangement registered under the Reserve Bank of India Act, 1934.</p> <p>(ii) Any scheme or an arrangement under which funds are accepted by individuals or entities engaged as Business Correspondents and Facilitators by banks subject to the Guidelines and Circulars issued by the Reserve Bank of India from time to time.</p> <p>(iii) Any scheme or an arrangement under which funds are received by a system provider operating as an authorised payment system under the Payment and Settlement Systems Act, 2007(51 of 2007).</p>

- | | |
|--|--|
| | (iv) Any other scheme or an arrangement regulated under the Reserve Bank of India Act, 1934 (2 of 1934), or the guidelines or circulars of the Reserve Bank of India. |
| 3. The Insurance Regulatory and Development Authority of India | A contract of insurance pursuant to a certificate of registration obtained in accordance with the Insurance Act, 1938 (4 of 1938). |
| 4. State Government or Union territory Government | <p>(i) Any scheme or an arrangement made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State or Union territory.</p> <p>(ii) Any scheme or an arrangement commenced or conducted as a chit business with the previous sanction of the State Government in accordance with the provisions of the Chit Funds Act, 1982 (40 of 1982).</p> <p>(iii) Any scheme or an arrangement regulated by any enactment relating to money lending which is for the time being in force in any State or Union territory.</p> <p>(iv) Any scheme or an arrangement by a prize chit or money circulation scheme under section 11 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (43 of 1978).</p> |
| 5. National Housing Bank | Any scheme or an arrangement for acceptance of deposits registered under the National Housing Bank Act, 1987 (53 of 1987). |
| 6. Pension Fund Regulatory and Development Authority | Any scheme or an arrangement under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013). |
| 7. Employees Provident Fund Organisation | Any scheme, Pension Scheme or Insurance Scheme framed under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952). |
| 8. Central Registrar, Multi-State Co-operative Societies | Any scheme or an arrangement for acceptance of deposits from voting members by a Multi-State Co-operative Society registered under the Multi-State Co-operative Societies Act, 2002 (39 of 2002). |
| 9. Ministry of Corporate Affairs, Government of India | <p>(i) Deposits accepted or permitted under the provisions of Chapter V of the Companies Act, 2013 (18 of 2013).</p> <p>(ii) Any scheme or an arrangement under which deposits are accepted by a company declared as a Nidhi or a Mutual Benefit Society under section 406 of the Companies Act, 2013 (18 of 2013).</p> |

(2) The following shall also be treated as Regulated Deposit Schemes under this Ordinance, namely :—

- (a) deposits accepted under any scheme or an arrangement registered with any regulatory body in India constituted or established under a statute ; and
- (b) any other scheme as may be notified by the Central Government under this Ordinance.

AMENDMENT TO CERTAIN ENACTMENTS

PART I

AMENDMENT TO THE RESERVE BANK OF INDIA ACT, 1934

Amendment of section 45-I of Act 2 of 1934.—In the Reserve Bank of India Act, 1934 (2 of 1934), in section 45-I, in clause (bb), after *Explanation II*, the following *Explanation* shall be inserted, namely :—

“*Explanation III.*—The amounts accepted by a co-operative society from the members or shareholders, by whatever name called, but excluding the amounts received as share capital, shall be deemed to be deposits for the purposes of this clause, if such members or shareholders are nominal or associate members, by whatever name called, who do not have full voting rights in the meetings of such co-operative society.”.

PART II

AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

Amendment of section 11 of Act 15 of 1992.—In the Securities and Exchange Board of India Act, 1992,—

(i) in section 11, in sub-section (4), for clause (e), the following clause shall be substituted, namely :—

“(e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder :

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply :

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the

SECOND SCHEDULE

[(See section 42)]

AMENDMENT TO CERTAIN ENACTMENTS

PART I

AMENDMENT TO THE RESERVE BANK OF INDIA ACT, 1934

Amendment of section 45-1 of Act 2 of 1934.—In the Reserve Bank of India Act, 1934 (2 of 1934), in section 45-1, in clause (bb), after *Explanation II*, the following *Explanation* shall be inserted, namely :—

“*Explanation III.*—The amounts accepted by a co-operative society from the members or shareholders, by whatever name called, but excluding the amounts received as share capital, shall be deemed to be deposits for the purposes of this clause, if such members or shareholders are nominal or associate members, by whatever name called, who do not have full voting rights in the meetings of such co-operative society.”.

PART II

AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

Amendment of section 11 of Act 15 of 1992.—In the Securities and Exchange Board of India Act, 1992,—

(i) in section 11, in sub-section (4), for clause (e), the following clause shall be substituted, namely :—

“(e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder :

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply :

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.” ;

(ii) in section 28A, after *Explanation 3*, the following *Explanation* shall be inserted, namely :—

“*Explanation 4.*—The interest referred to in section 220 of the Income-tax Act, 1961 (43 of 1961) shall commence from the date the amount became payable by the person.”.

PART III

AMENDMENT TO THE MULTI-STATE CO-OPERATIVE SOCIETIES ACT, 2002

Amendment of section 67 of Act 39 of 2002.—In the Multi-State Co-operative Societies Act, 2002, in section 67, in sub-section (1),—

- (a) after the words “receive deposits”, the words “from its voting members” shall be inserted ;
- (b) the following *Explanation* shall be inserted, namely :—

“Explanation.—For the removal of doubts, it is hereby clarified that a multi-State co-operative society shall not be entitled to receive deposits from persons other than voting members.”.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Government of India.

By order and in the name of the Governor of Maharashtra,

RAJENDRA G. BHAGWAT,
Secretary (Legislation) to Government,
Law and Judiciary Department.